IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Ramswaroop Vs. State of Raj. & Ors.

S.B.CR. MISC. PETITION NO.816/2005

against the order dt.6.2.2004 passed by Judge, Family Court, Jodhpur in Cr.Misc.Case No.141/2002.

DATE OF ORDER :: July 11, 2006

HON'BLE MR.H.R.PANWAR,J.

None present, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for State.
Mr.K.L.Maheshwari, for non-petitioners No.2 & 3.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has assailed the order dt. 6.2.2004 passed by Judge, Family Court, Jodhpur (for short 'the trial court' hereinafter) in criminal misc. case No.141/02, whereby the trial court, on an application, granted the interim maintenance in favour of non-petitioners No.2 and 3 at the rate of Rs.700/- per month with effect from 30.9.2002 i.e. the date of filing of the application as also the orders dt. 2.7.2004 and 25.5.2005 by which the amount of arrears of maintenance is sought to be

recovered.

I have carefully gone through the petition filed by the petitioner and the order dt. 6.2.2004 as also the subsequent orders by which the maintenance is sought to be recovered by taking coercive steps.

Learned counsel for non-petitioners No.2 and 3 has relied on a decision of Hon'ble Supreme Court in Shantha alias Ushadevi & Anr. vs. B.G.Shivananjappa, **AIR 2005 SC 2410,** wherein the Hon'ble Supreme Court while considering the limitation for issuance of warrant held that when the earlier application was filed for issuance of warrant within stipulated period of one year and the subsequent application in the very proceeding claiming arrears for subsequent period cannot be said to be barred by period of limitation.

The grievance of the petitioner is that the trial court awarded maintenance from the date of application and not from the date of order. Sub-section(2) of section 125 Cr.P.C. provides that any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and

expenses of proceeding, as the case may be.

In the instant case, the maintenance has been awarded from the date of application and, therefore, it cannot be said to be contrary to the provisions of section (2) 125 Cr.P.C.. In the circumstances, therefore, it cannot be said that the order impugned would result in manifest injustice or abuse of process of court warranting interference invoking the extra-ordinary jurisdiction under section 482 Cr.P.C.

Consequently, the misc. petition is dismissed. Stay petition also stands dismissed.

[H.R.PANWAR],J.

m.asif/-